



# PESTICIDE ESA NEWS

Washington State Department of Agriculture ➔ Endangered Species Program Newsletter

## Judge orders buffers

U.S. Western District Court Judge John Coughenour issued the final ruling on Jan. 22 in the Washington Toxics Coalition et al., v. EPA lawsuit. The lawsuit alleged that EPA failed to consult with National Marine Fisheries Service (NMFS) as required under Section 7 of the Endangered Species Act (ESA). See the related article about the consultation process on page 2.

The ruling, which took effect Feb. 5, mandates buffer zones of 20 yards for ground applications and 100 yards for aerial applications for 38 of the 54 pesticides named in the lawsuit. In addition to the buffers, educational materials are required at the point of sale to alert pesticide users in urban areas to the potential risks of using certain pesticides near salmonid habitat.

The case is expected to have far-reaching effects on pesticide use. The Washington State Department of Agriculture (WSDA) is in the process of fully analyzing the order for its impacts on Washington agriculture and has developed a complete listing of **pesticides subject to buffer zones** in Washington State. WSDA will prepare an in-depth analysis of the order as soon as possible.

A copy of the order and the WSDA preliminary review is available on the WSDA Endangered Species Program web page at [agr.wa.gov/PestFert/EnvResources/Lawsuit.htm](http://agr.wa.gov/PestFert/EnvResources/Lawsuit.htm). ➔

## Pesticide group to appeal ruling on buffers

Intervenors, including CropLife America, plan to appeal the federal court order that forbids the application of 38 pesticides near water bodies where salmon are ordinarily found. CropLife America is part of the pesticide industry group that intervened for EPA in the Washington Toxics Coalition et al., v. EPA lawsuit.

CropLife America general counsel Doug Nelson said that the multi-intervenor appeal is based on the argument that “the judge didn’t have jurisdiction over the case because he wasn’t presented with an actual controversy. The litigation wasn’t about allegations of harm to salmon. It was a programmatic dispute. The judge went way beyond his authority,” said Nelson.

U.S. Western District Court Judge John Coughenour issued the final ruling on Jan. 22. See the related article on page 1.

Additional information about the Washington Toxics Coalition et al., v. EPA lawsuit, including court filings as well as the effects determination status of the 54 pesticides is available at [agr.wa.gov/PestFert/EnvResources/Lawsuit.htm](http://agr.wa.gov/PestFert/EnvResources/Lawsuit.htm). ➔

*Information from InsideEPA.com and Pesticide.net was used in this report.*



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## QUESTIONS?

For more information about the Endangered Species Program, visit our Web site at  
[agr.wa.gov/PestFert/EnvResources/EndangSpecies.htm](http://agr.wa.gov/PestFert/EnvResources/EndangSpecies.htm)

We welcome your input. Please send your comments and questions to the WSDA Endangered Species Program at  
[esp@agr.wa.gov](mailto:esp@agr.wa.gov)

**Awareness**

**Action**

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## Comment period opened for proposed counterpart regulations

NOAA Fisheries and U.S. Fish & Wildlife Service (the “Services”), in conjunction with USDA and EPA, announced Jan. 30 that they are accepting comments on proposed counterpart regulations for FIFRA actions requiring consultation under Section 7 of the Endangered Species Act (ESA).

The **Federal Register notice announcing the proposed regulations** has a 60-day public comment period. U.S. Fish & Wildlife Service has agreed to take responsibility for receipt of public comments and must receive comments on the proposal by March 30, 2004 to be considered in the final decision process for the counterpart regulations. U.S. Fish & Wildlife Service will share all comments it receives with NOAA Fisheries, EPA and USDA.

The counterpart regulations were developed to enhance the efficiency and effectiveness of the **Section 7 consultation process** by increasing interagency cooperation between the Services and EPA. With the flexibility provided by the proposed regulations, EPA would be able to set its own priorities for effects determinations rather than having the courts set the prioritization of ESA obligations for EPA.

The proposed counterpart regulations offer two alternatives to the existing consultation process.

The first option proposes an alternative consultation agreement that would allow EPA to determine that a pesticide is “not likely to adversely affect” a threatened or endangered species without informal consultation or written concurrence from the Services. EPA would also have the option of requesting participation from the Services in developing the effects determinations.

The second provides for a formal consultation procedure that establishes strict timelines for the Services and EPA to exchange information on the effects of pesticides on listed species and defers to **EPA’s process for evaluating those impacts**. This alternative also permits EPA to include some aspects of a biological opinion in its effects determination.

On March 2, EPA will hold a public workshop in Alexandria, Va., to explain the EPA pesticide risk assessment process from the time pesticide data is received by EPA thorough the time EPA makes an effects determination for a listed species. EPA will release details on the workshop next week.

To facilitate workshop discussions, EPA has posted information regarding the EPA regulatory process on their web page at [epa.gov/espp/consultation/index.html](http://epa.gov/espp/consultation/index.html). ➔

## Fish facts: Regulations to protect salmon aren’t new



Regulating the effects of dams and other in-channel barriers to fish migration has a long history. A statute dating from the reign of Richard I (the Lionhearted) in the twelfth century declared the English rivers be kept free of obstructions so that a well-fed three-year-old pig could stand sideways in the stream without touching either side. This mandate to leave a hole in anything built across the a river was intended to allow adult salmon to reach their spawning grounds and these fish passways came to be known as the King’s gap. ➔

*Photo courtesy of BLTC Research*

*Excerpt from “King of Fish: The Thousand Year Run of Salmon” by David R. Montgomery.*